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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANNIE R. SMITH,

No. C 07-04885CW

Plaintiff,

v.

ORDER OF TRANSFER

U.S. DEPARTMENT OF EDUCATION,  
et al.,

Defendants.

/

Plaintiff brings this lawsuit on behalf of her grandson, a minor, alleging that Defendants violated his civil rights under various federal statutes. The events giving rise to this action all occurred in the Western District of North Carolina. None of the parties reside in the Northern District of California, and there is no connection between the Northern District of California and the cause of action. On November 6, 2007, the Court issued an order directing Plaintiff to show cause why this lawsuit should not be dismissed or transferred for improper venue. Plaintiff filed a response to this order on November 26, 2007.

Pursuant to 28 U.S.C. § 1331(b), when jurisdiction is not based solely on diversity of citizenship, an action may be brought only in: (1) the district in which any defendant resides, if all of the defendants reside in the same state; (2) the district in which a substantial part of the events or omissions giving rise to the

1 claim occurred, or a substantial part of the property that is the  
2 subject of the action is situated; or (3) a judicial district in  
3 which any defendant may be found, if there is no district in which  
4 the action may otherwise be brought. When venue is improper, a  
5 district court may dismiss the case or, if it is in the interest of  
6 justice, transfer the case to any other district in which it could  
7 have been brought. 28 U.S.C. § 1406(a). A district court may  
8 raise the issue of venue sua sponte. See Costlow v. Weeks, 790  
9 F.2d 1486, 1488 (9th Cir. 1986).

10 Plaintiff's response to the Court's order to show cause does  
11 not argue that venue is proper under 28 U.S.C. § 1391(b), but  
12 rather argues that the Western District of North Carolina is  
13 steeped in a legacy of discrimination and that the judge assigned  
14 to her case in that district is biased against her. Even if true,  
15 these allegations do not give the Court the authority to entertain  
16 this lawsuit.

17 It is clear from the complaint that Plaintiff's claims arise  
18 from events that occurred outside of the Northern District of  
19 California. Venue is therefore improper in this district, and the  
20 Court hereby TRANSFERS this action to the Western District of North  
21 Carolina. Plaintiff's motion to proceed in forma pauperis (Docket  
22 No. 3) is referred to the judge assigned to the case following  
23 transfer.

24  
25 Dated: 12/11/07



CLAUDIA WILKEN  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

SMITH et al,

Plaintiff,

Case Number: CV07-04885 CW

V.

U.S. DEPARTMENT OF EDUCATION et al.

**Defendant.**

## **CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

11 That on December 11, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
in the Clerk's office.

15      Annie R. Smith  
16      5906 Barrington Drive  
          Charlotte, NC 28215

17 || Dated: December 11, 2007

Richard W. Wieking, Clerk  
By: Sheilah Cahill, Deputy Clerk